

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Joint Application by BellSouth Corporation,)	CC Docket No. 02-35
BellSouth Telecommunications, Inc., and)	
BellSouth Long Distance, Inc.)	
)	
For authorization to provide in-region,)	
interLATA service in the States of Georgia)	
and Louisiana)	

**COMMENTS IN OPPOSITION OF NEXTEL
COMMUNICATIONS, INC.**

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SUMMARY

BellSouth interconnects with Nextel for the exchange of telecommunications traffic. BellSouth recently adopted a new interconnection policy across all its markets that will disrupt the existing arrangements Nextel and other interconnecting carriers have maintained with BellSouth up to this point. Essentially, BellSouth will no longer provide direct interconnection to NXX codes with rating points outside BellSouth's landline franchise areas. BellSouth also has informed Nextel that it must reconfigure existing interconnection arrangements that do not conform with the new BellSouth policy.

The new BellSouth policy violates section 252(c)(2) and Commission rules because it denies Nextel the ability to interconnect at any technically feasible point, and specifically, the ability to adopt a single point of interconnection with BellSouth in any LATA. While BellSouth claims that its new policy is motivated by concern that BellSouth not provide service outside of its franchised area, it has provided no state decisions supporting its claims, and in any event, such decisions would be inconsistent with federal law and thus preempted. BellSouth's policy also is discriminatory, because BellSouth will continue to interconnect with incumbent LECs that hold NXX codes with rating points outside the BellSouth area, but it will not do so for Nextel or other carriers. As a result, BellSouth fails to meet the statutory threshold for satisfying checklist item one.

Checklist item nine requires adherence to industry numbering guidelines and Commission numbering rules. By denying interconnection for NXX codes assigned by NeuStar, BellSouth arrogates to itself the authority the Commission delegated to NeuStar. Both Commission rules and industry guidelines provide that carriers only be authorized to serve a specific area prior to receiving an NXX code and having that code activated. Nextel is authorized to provide CMRS service in the geographic area where BellSouth is refusing to activate Nextel's NXX codes. BellSouth has thus failed to satisfy checklist item nine.

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**COMMENTS IN OPPOSITION OF NEXTEL
COMMUNICATIONS, INC.**

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits these comments in opposition to the above-captioned application (the "Application") of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authorization to provide in-region interLATA service in Georgia and Louisiana.¹ Nextel files these comments to apprise the Commission of a new BellSouth interconnection policy that violates BellSouth's Section 251(c)(2) interconnection obligations, as well as its obligations under the Commission's rules governing number administration. As described below, the new interconnection policy is contrary to BellSouth's legal obligations to

¹ See Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, *Public Notice*, CC Docket No. 02-35, DA 02-337 (rel. Feb. 14, 2002).

other carriers and to well established Commission rules. Consequently, BellSouth's Application must be denied.

I. BACKGROUND

Nextel is a Commercial Mobile Radio Service ("CMRS") provider with more than eight million subscribers throughout the United States. Nextel interconnects with a variety of carriers and presently has over 150 interconnection agreements with incumbent Local Exchange Carriers ("ILECs") for the reciprocal termination of local telecommunications traffic. Nextel's nationwide network covers BellSouth's landline local exchange areas, and Nextel exchanges traffic for termination to BellSouth customers in Georgia and Louisiana and the rest of BellSouth's territory using direct interconnection facilities, as called for by the parties' interconnection agreements.

Recently, BellSouth adopted an interconnection policy that threatens to disrupt existing interconnection and traffic routing arrangements BellSouth has maintained with Nextel and other CMRS providers. On January 23, 2002, BellSouth sent Nextel a letter describing this new policy.² Essentially, BellSouth's letter states that it no longer will activate an NPA/NXX code in its switches if the rating point for the code is located outside of BellSouth's landline franchise area. Additionally, if BellSouth identifies any such "outside" NXX code presently activated in its switches, it will stop directly routing calls for termination to that code from its switches. Under its new policy, BellSouth apparently expects carriers holding such "outside" NXX codes to establish direct interconnection with the ILEC serving the location of the NXX rating point.

² A copy of BellSouth's January 23, 2002 letter to Nextel's Southeastern Regional Vice President is attached as Exhibit 1.

BellSouth will route calls destined for NXXs located outside its landline franchise area through the other ILEC's facilities, rather than routing them directly to Nextel for termination.

BellSouth's new policy is flatly contrary to basic statutory requirements as reflected in the Commission's rules. The policy also will impose significant new network costs and threatens to make the provision of service to customers in rural areas extremely, if not prohibitively, expensive. Because BellSouth is implementing interconnection and numbering practices that do not adhere to the Commission's rules, it is violating items one and nine of the Section 271 "competitive checklist."³ Consequently, unless BellSouth rescinds its new policy, the Application must be denied.⁴

In reviewing Section 271 applications, the Commission has cautioned commenters that they should participate in the state commission review process, so that state commissions, in the first instance, have the opportunity to evaluate any significant issues and competitive concerns and factor them into their recommendations to this Commission on Section 271 applications. Nextel had no reason to know that BellSouth would adopt a new interconnection policy, and thus had no reason to participate in the state commission review process. It was only in late January that Nextel was informed by BellSouth of its new interconnection policy, so this is the first opportunity Nextel has had to make its concerns about BellSouth's policy known.⁵ Thus, the Commission has good cause and is, in any event, obligated to consider the effect of BellSouth's new interconnection policy on its Section 271 compliance showing.

³ 47 U.S.C. § 271 (c)(2)(B)(i), (ix).

⁴ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, *Memorandum Opinion and Order*, 12 FCC Rcd 20543, ¶ 43 (1997) (the burden of demonstrating compliance with each of the checklist items falls on the applicant incumbent local exchange carrier ("ILEC")).

⁵ By letter dated February 26, 2002, Nextel did inform BellSouth of its objection to BellSouth's new policy.

II. BELLSOUTH'S NEW POLICY VIOLATES ITS INTERCONNECTION OBLIGATIONS.

Section 271 requires Bell Operating Companies applying for authority to provide in-region, interLATA service to demonstrate that their interconnection practices are consistent with Sections 251(c)(2) and 252(d)(1) of the Communications Act.⁶ BellSouth's new policy, however, violates the Commission's interconnection rules and policies in several significant respects.

First, it deprives Nextel (and other carriers) of the right to interconnect with BellSouth at any "technically feasible point" within BellSouth's network.⁷ Under the Commission's rules, BellSouth must interconnect with Nextel for purposes of terminating any call that originates from, and terminates to, points in the same Major Trading Area ("MTA"), regardless of whether the call terminates within BellSouth's franchise area.⁸ By refusing to activate NXX codes with rating points outside its franchise area, but within the MTA, BellSouth essentially is refusing to interconnect with Nextel for the purposes of terminating calls to and from telephone numbers associated with those codes, even when such calls are indisputably local calls as determined by the Commission. Even though interconnection and termination of those calls is "technically feasible" at many points within BellSouth's network ? indeed, it already occurs ? BellSouth's new policy deprives Nextel of any point of interconnection for these calls.

Second, BellSouth's new policy deprives Nextel of its right to choose its own points of interconnection.⁹ BellSouth's new policy effectively dictates the points at which Nextel can

⁶ 47 U.S.C. § 271 (c)(2)(B)(i).

⁷ 47 U.S.C. § 251(c)(2)(B); 47 C.F.R. § 51.305(a)(2).

⁸ 47 C.F.R. § 51.701(b)(2) (intraMTA traffic defined as local for interconnection between LECs and CMRS providers).

⁹ 47 C.F.R. § 51.05(a).

interconnect certain calls by requiring it to seek direct interconnection with another ILEC for some calls. This deprives Nextel of the opportunity to interconnect the affected calls at the point that is most efficient and compatible with Nextel's network needs. Indeed, BellSouth's policy of forcing direct interconnection with every ILEC forces other carriers to invest in facilities that cannot be justified on any volume of traffic or other rational basis. This policy imposes a competitive and cost disadvantage on Nextel and other carriers.

Third, the policy deprives Nextel of its right to choose a single interconnection point in a LATA.¹⁰ BellSouth would require Nextel to establish direct interconnection with every ILEC in whose service area Nextel assigns an NXX code rating point. Thus, BellSouth's policy would require Nextel to establish multiple points of interconnection with BellSouth's network in every LATA where BellSouth is not the only franchised ILEC. Moreover, by requiring Nextel to interconnect directly with numerous smaller and rural ILECs, BellSouth's policy would impose substantial new interconnection costs on Nextel without any countervailing benefits.

BellSouth's letter states the reason for the new policy is because BellSouth does not want to be in the position of providing service outside its franchised service areas.¹¹ This claim, however, does not change the fact that the policy violates federal law. Even if BellSouth could demonstrate that its position was justified under state-law, however, it would have no legal effect, because state regulations that purport to govern Nextel's interconnection with ILECs are

¹⁰ 47 USC §251(c)(2),(3); *see also* 47 CFR §51.305(a)(2).

¹¹ January 23 Letter at 2. The letter observes that routing calls to Nextel when the rating point is outside BellSouth territory "places BellSouth and the third party telecommunications carrier in the position of having to rate calls as though the calls have actually been originated from or terminated to the third party telecommunications carrier." This of course is not correct and, in any event, is under BellSouth's control. The rating points of Nextel's NXX codes are specified by the V and H coordinates listed in the Local Exchange Routing Guide" (the "LERG") by Nextel, and not on the basis of third party tariffs. If BellSouth relies upon third party tariffs to determine rating points, it can modify that practice at anytime by changing its tariff terms to reflect use of the LERG coordinates.

preempted both by Section 251(c) and Section 332(c) of the Communications Act.¹² Thus, BellSouth's claim that state franchise considerations require its new interconnection policy is obviously mistaken, and must be rejected.

Moreover, BellSouth's claim that its landline franchise requires it to refuse activation of NXX codes outside its service area is puzzling because BellSouth offers such interconnection to ILECs as a matter of course. Nextel obtains NXX codes only for areas where it is authorized to provide service, and it assigns rating points for the NXX codes only at locations where it actually provides service over its wireless facilities. When BellSouth interconnects to exchange a call with Nextel, Nextel terminates the call within its authorized service area. To Nextel's knowledge, BellSouth has never suggested that interconnecting directly with other ILECs for the purpose of terminating calls originating outside BellSouth's franchise area violates any state franchise provision. Thus, BellSouth's new policy may also promote unlawful discrimination among carriers prohibited by the Commission's rules.¹³

In addition to violating the Commission's interconnection rules, BellSouth's new policy will increase Nextel's costs significantly, particularly for service to customers in rural areas and in MTAs with multiple ILECs. By increasing Nextel's interconnection costs, BellSouth will gain a considerable competitive advantage. This highlights the very reason for checklist item one: to ensure that BOCs do not inhibit competition by leveraging their bottleneck control over

¹² 47 U.S.C. §§ 251(c)(2), 332(c)(1)(B); see *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378-79 (1999) (preemption of state authority concerning interconnection); *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (confirming FCC authority over CMRS interconnection under Section 332(c)).

¹³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 16499, 16608 (1996) ("incumbent LECs may not discriminate against parties based upon the identity of the carrier").

the local telephone markets they serve.¹⁴ For this reason, the Commission must enforce strict compliance with Section 251(c)(2) in this proceeding and deny the Application.

III. BELLSOUTH'S NEW POLICY VIOLATES THE COMMISSION'S NUMBERING RULES.

BellSouth's new policy also violates the competitive checklist requirement nine, which requires that Section 271 applicants to maintain compliance with the Commission's numbering rules.¹⁵ BellSouth's new policy represents a significant violation of those rules because it makes BellSouth the ultimate arbiter of permissible number use, a role that the Commission has delegated to NeuStar as the North American Numbering Administrator.¹⁶

It is NeuStar's role to determine the validity of carriers' use of numbering resources. Once Neustar determines that Nextel is entitled to an NXX code, BellSouth has no authority to dispute that decision. Instead, BellSouth must activate the NXX code in its switch and route the call according to Nextel's directions. Nextel's NXX codes are no different in this regard than NXX codes held by ILECs operating outside BellSouth's franchise area. Because BellSouth activates those NXX codes in its switches, it must activate those of competitive carriers like Nextel.

BellSouth's new policy would give it *de facto* veto power over NeuStar's decisions and the ability to intervene in the numbering resource allocation process whenever it disagrees with NeuStar. BellSouth has the same avenues for dealing with other carriers' asserted abuse of

¹⁴ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, *Memorandum Opinion and Order*, 12 FCC Rcd 20543, ¶ 14 (1997) ("Section 271 thus creates a critically important incentive for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets.").

¹⁵ 47 U.S.C. § 271 (c)(2)(B)(ix).

¹⁶ 47 U.S.C. § 251(e) (granting FCC exclusive authority over numbering); 47 C.F.R. § 52.15 (delegating central office code administration).

numbering resources that every other carrier has. It can complain to NeuStar, and if that fails, to the Commission. Nothing in the Act or the Commission's rules grants BellSouth the authority to privately police purported numbering abuses. Instead, the Commission should find that BellSouth's new policy violates its numbering rules and establishes that BellSouth has failed to satisfy the numbering resource item on the Section 271 checklist, precluding approval of the Application.

IV. CONCLUSION.

For the foregoing reasons, Nextel opposes BellSouth's Section 271 Application, and requests that the Commission dismiss the Application with direction to BellSouth that it cannot

satisfy the Section 271 checklist items regarding interconnection and numbering until it discontinues its policy regarding activation of NXX codes with rating points outside its landline franchise area.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/Laura H. Phillips

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March 4, 2002

NEXTEL COMMUNICATIONS, INC.
BELLSOUTH CORPORATION, ET AL.
GEORGIA AND LOUISIANA

EXHIBIT 1

BellSouth January 23 Letter

BellSouth Interconnection Services

2872 Woodcock Boulevard
Suite 300
Chamblee, Georgia 30341

Dennis Malone
Office 770-454-2997
Fax: 770-454-3003

Mr. Tony Mistretta
Nextel Communications
Office 518
6575 The Corners Parkway
Norcross, Georgia 30092

Dear Mr. Mistretta:

This letter is in direct response to your request for clarification of BellSouth's position on establishing NPA/NXX codes in non-BellSouth service areas. Much conversation has been expended over the past few months regarding BellSouth's Virtual Designated Exchange options and the impact associated with non-BellSouth Service Areas or Independent Territories. The following position statement you will likely see in whole or in part in a Carrier Notification Letter released by BellSouth later in January.

BellSouth Telecommunications, Inc. (BellSouth) is franchised to provide telecommunications services in specific geographic service areas. Increasingly, telecommunications carriers are requesting activation of NPA/NXX arrangements whereby routing of traffic is established within BellSouth service areas and rating of such traffic is established with a third-party telecommunications carrier's rate center service area. The third-party rate centers are for service areas outside of BellSouth's franchised service area.

Routing of traffic to these NPA/NXXs, with this arrangement, is such that calls from the Public Switched Telephone Network (PSTN), due to the routing requested for the NPA/NXX, never terminate to the third-party network. Calls originating from these NPA/NXXs transit the BellSouth network for termination rather than transiting the third-party telecommunications carrier network, as they should. Further, by this arrangement establishing a rate center in the third-party's service area and a routing center in BellSouth, normal local and toll options, associated with landline end-user calls, will be rated in a manner inconsistent with the routing of the call. This arrangement places BellSouth and the third-party telecommunications carrier in the

position of having to rate calls as though the calls have actually been originated from or terminated to the third-party telecommunications carrier based on tariffs for the third party, which is contrary to current regulations.

BellSouth does not agree with establishment of this arrangement, as to do so causes BellSouth and/or the third-party telecommunications carrier to violate state commission regulations under which they operate. Review of the guidelines provided by NeuStar, Managers of the National Code Administration System, shows that applications of rating and routing centers must meet all regulatory requirements.

BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth. This position is applied uniformly across all telecommunications carrier markets.

Finally, any locations that require reconfiguration to meet BellSouth's position should be rectified as soon as possible. The account team remains available to you and your staff to assist Nextel in this process.

Sincerely,

Dennis Malone
Sales Director

Cc: Connie Yates, ICS Account Manager

Exhibit 2

Declaration of Robert Edgerly

DECLARATION OF ROBERT EDGERLY

1. My name is Robert Edgerly. I am Senior Manager Interconnection and Design of Nextel Communications, Inc. ("Nextel"). I am making this declaration in connection with Nextel's comments in opposition to the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region interLATA service in the states of Georgia and Louisiana.

2. In my role as Senior Manager Interconnection and Design, I am familiar with the status of Nextel's interconnection arrangements with BellSouth. I also am responsible for Nextel's compliance with numbering resource requirements. The statements in this declaration are based on my personal knowledge.

3. I have reviewed the document attached to Nextel's comments as Exhibit 1. It is a true and correct copy of the BellSouth letter sent to Nextel on January 23, 2002.

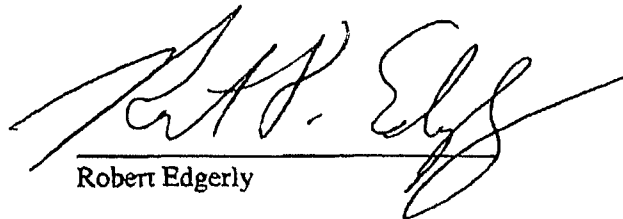
4. Following receipt of the January 23, 2002 letter, I sought additional guidance from BellSouth concerning the new policy articulated in the letter and its effect on Nextel. In particular, I sought to determine if it was BellSouth's intent to preclude direct interconnection with Nextel for the purpose of routing calls to NXX codes with locations outside BellSouth's franchise areas. I was informed that this was the case. Further, BellSouth informed me that this policy would apply both to newly-activated NXX codes and to any existing NXX code once BellSouth determined that the code had a rating point outside BellSouth's franchise area.

5. Like many other wireless providers, Nextel has a longstanding practice of separating the rating and routing points of many of its NXX codes. This practice reflects the large geographic areas covered by the switches used by wireless carriers. This practice also reflects the differences in network architecture between wireless providers and incumbent local exchange carriers, which usually have at least one switch in each local calling area.

6. Consistent with the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee, Nextel applies for NXX codes only in areas where it is authorized to serve and actually provides service or intends to provide service following assignment of a code. Nextel's rating points for its operational NXX codes all are contained within its actual service area. Nextel never has been denied an NXX code by NeuStar based on the rating point specified in the NXX code application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2002.



Robert Edgerly

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 4th day of March, 2002, copies of the foregoing “**COMMENTS IN OPPOSITION OF NEXTEL COMMUNICATIONS, INC.**” were served via first-class mail, postage prepaid, on the following:

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